



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 7 1998

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Dear Ms. Shelson and Mr. Walters:

This refers to the following requests for reconsideration of objections interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c (Section 5), to changes that affect the manner in which municipal separate school district boundaries in Mississippi can be modified:

1) The request by the Lamar County School District in Lamar County, Mississippi, that the Attorney General reconsider and withdraw the May 25, 1990 objection to Chapter 379 (1977). We received this request on March 19, 1998; supplemental information was received on March 30, 1998.

2) The request by the State of Mississippi that the Attorney General reconsider and withdraw the May 25, 1990 objection to Chapter 379 (1977). We received this request on April 1, 1998.

3) The request by the State of Mississippi that the Attorney General reconsider and withdraw the March 31, 1989 objection to Section 47 of Chapter 492 (1986), to the extent that it repeals Miss. Code Ann. 37-7-611. We received this request on April 1, 1998.

4) The request by the Forrest County School District in Forrest County, Mississippi, that the Attorney General reconsider and withdraw the March 31, 1989 objection to Section 47 of Chapter 492 (1986), to the extent that it repeals Miss. Code Ann. 37-7-611. We received this request on April 20, 1998; supplemental information was received on April 22, 1998.

This also refers to the following submissions under Section 5 of voting changes that also affect the manner in which municipal separate school district boundaries in Mississippi can be modified:

5) The submission by the Lamar County School District to the Attorney General, pursuant to Section 5, of Chapter 312 (1978). We received this submission on March 19, 1998; supplemental information was received on March 30, 1998.

6) The submission by the State of Mississippi to the Attorney General, pursuant to Section 5, of Chapter 312 (1978). We received this submission on April 1, 1998.

7) The submission by the State of Mississippi to the Attorney General, pursuant to Section 5, of Section 52 of Chapter 492 (1986), to the extent that it repeals Miss. Code Ann. 37-7-611. We received this submission on April 1, 1998.

8) The submission by the Forrest County School District to the Attorney General, pursuant to Section 5, of Section 52 of Chapter 492 (1986), to the extent that it repeals Miss. Code Ann. 37-7-611. We received this submission on April 20, 1998; supplemental information was received on April 22, 1998.

Under Section 5, the benchmark against which the proposed changes must be assessed is contained in Miss. Code Ann. 37-7-611, which provides that whenever a Mississippi municipality which has a municipal separate school district annexes territory, the municipal separate school district will automatically expand into the territory annexed by the municipality. Chapter 379 (1977) and Chapter 312 (1978) create an exception to Miss. Code Ann. 37-7-611 in the case of a municipality which annexes territory across a county line, and provide that the municipal separate school district will not expand into the territory annexed by the municipality under those circumstances without the agreement of the school district in the annexed area. Sections 47 and 52 of Chapter 492 (1986), taken together, totally repeal the procedures for changing municipal separate school district

boundaries provided for in Miss. Code Ann. 37-7-611 and provide that no annexation by a municipality will affect a municipal separate school district boundary absent the agreement of all affected school districts.

In Dupree v. Moore, Civil Action No. H90-0043(W) (S.D. Miss.), a Section 5 enforcement action, the federal court found that the now-submitted provisions of the 1977, 1978, and 1986 statutes, to the extent that they alter the rule governing changes in municipal separate school district boundaries contained in Miss. Code Ann. 37-7-611, occasion voting changes which are covered by the preclearance provisions of Section 5. See Dupree v. Mabus, 776 F. Supp. 290 (S.D. Miss. 1991) (three-judge court) (Dupree I), vacated and remanded, 503 U.S. 930 (1992); on remand, Dupree v. Moore, 831 F. Supp. 1310 (S.D. Miss. 1993) (Dupree II), vacated and remanded, 514 U.S. 1059 (1995); on remand, Dupree v. Moore, (S.D. Miss. Dec. 29, 1995) (Dupree III), aff'd, 517 U.S. 1241 (1996). Specifically, the court held that these three statutes affect voting because, inter alia, where municipal separate school district boundaries do not expand with municipal annexations these statutes will "allow the annexed areas' voters not residing in the City school district to vote for the City's governing authorities, who in turn select the City school board." Dupree, 776 F. Supp. at 292. As a result, "[t]he vote of the City voters who reside in the municipal school district would be diluted by the vote of those residents in the annexed area who remain a part of the county school district" and "the vote from the annexed area could have an impact on the selection of the City school board." Id. at 300.

In addition, in the Dupree litigation, the court held that the now-submitted provisions of the 1977 and 1978 statutes, to the extent that they create exceptions to Miss. Code Ann. 37-7-611, and the now-submitted provisions of the 1986 statute, to the extent that they effect a repeal of Miss. Code Ann. 37-7-611, have not previously received Section 5 preclearance. Id. We understand that the present submissions and requests for reconsideration relate only to these previously unprecleared provisions of the 1977, 1978 and 1986 statutes, and only to the extent that they alter the rule in Miss. Code Ann. 37-7-611.

We also note that the statutes under consideration in the pending submissions and requests for reconsideration are at issue in the pending Section 5 declaratory judgment action, Mississippi v. Reno, Civil Action No. 96-1712 (D.D.C.), in which the State is a plaintiff and in which the Lamar County School District was permitted to intervene as a plaintiff under Rule 24(b), Fed. R. Civ. P. (as to the 1977 and 1978 statutes).

With regard to the Forrest County School District's submission of Section 52 of Chapter 492 (1986) and its request for reconsideration of the prior objection to Section 47 of Chapter 492 (1986), we note that the Forrest County School District previously sought intervention in Mississippi v. Reno to advance its claims for preclearance of these same provisions of the 1986 Act; however, such intervention was not granted by the Court. We have likewise determined that the Forrest County School District is not a proper submitting authority for these statewide provisions of the 1986 Act. Accordingly, no determination will be made on the Forrest County School District's submission, and its request for reconsideration will not be considered. See the Procedures for the Administration of Section 5, 28 C.F.R. 51.23(a), 51.35, 51.45(a).

With regard to the requests for reconsideration by the State and the Lamar County School District, we have reconsidered our earlier determinations in this matter as to Section 47 of Chapter 492 (1986), to the extent that it repeals Miss. Code Ann. 37-7-611, and as to Chapter 379 (1977) based on the information provided and arguments advanced in support of these requests as well as in the proceedings and settlement discussions in Mississippi v. Reno, along with information in our files and comments received from interested persons. In particular, we have considered the State's view, advanced in Mississippi v. Reno, that even if the voting changes at issue in these statewide statutes are precleared, the Attorney General retains the "power, ab initio, to prevent dilutive annexations through Section 5 review of those proposed annexations themselves." Complaint at ¶ 10.

Under Section 5, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a retrogressive effect. See Beer v. United States, 425 U.S. 130 (1976); Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Our further analysis of this matter demonstrates that the burden of the State and the Lamar County School District under Section 5 has been met with regard to these voting changes. Accordingly, pursuant to 28 C.F.R. 51.48(b), the March 31, 1989 objection interposed with respect to Section 47 of Chapter 492 (1986), to the extent that it repeals Miss. Code Ann. 37-7-611, and the May 25, 1990 objection interposed with respect to Chapter 379 (1977), are hereby withdrawn. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

With regard to the current submission by the State of Section 52 of Chapter 492 (1986), to the extent that it repeals Miss. Code Ann. 37-7-611, and the current submissions by the State and the Lamar County School District of Chapter 312 (1978), the Attorney General does not interpose any objection to the specified changes. Again, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

The submitted provisions of the 1977, 1978, and 1986 statutes are viewed as enabling in nature because the actual impact of the changes authorized in the procedures for modifying municipal separate school district boundaries is contingent upon the facts and circumstances surrounding individual annexations by municipalities with municipal separate school districts, and must be reviewed in that context. Accordingly, local jurisdictions have the responsibility to seek Section 5 preclearance of any changes affecting voting that are proposed to be implemented pursuant to this legislation (e.g., an extension of municipal boundaries through annexation outside of the municipal separate school district that does not also expand the boundaries of the municipal separate school district). See 28 C.F.R. 51.15.

Our review and preclearance of the voting changes referenced above is conducted pursuant to Section 5 of the Voting Rights Act, which authorizes only a determination of whether changes affecting voting have the purpose or effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.10, 51.41 and 51.52; see also Beer, 425 U.S. at 141. For this reason, "preclearance by the Attorney General of a voting change does not constitute the certification that the voting change satisfies any other requirement of the law beyond that of section 5." 28 C.F.R. 51.49. Accordingly, we express no view regarding the purpose or effect of the changes precleared herein in any context other than with respect to voting.

In addition, as you know, there are a number of annexations by municipalities with municipal separate school districts which have occurred since 1977, which are covered by the 1977, 1978 and 1986 statutes, and which have previously been submitted to the Attorney General under Section 5 only insofar as they impact on changes in municipal boundaries. The Attorney General previously reviewed these annexations on the premise that the unprecleared provisions of the 1977, 1978, and 1986 statutes were not "effective as law" under Section 5, see Clark v. Roemer, 500 U.S. 646, 652 (1991), and thus presumed that municipal annexations

would automatically expand municipal separate school district boundaries. With the preclearance of the repeal of Miss. Code Ann. 37-7-611, we understand that the State will assist its municipalities in promptly resubmitting these prior annexations, and we will assess their voting impact and purpose under Section 5 with respect to the affected municipal separate school districts.

Finally, we are aware that concerns have been raised as to how implementation of the statutes precleared herein may impact on minority electoral opportunities in the future. Accordingly, we intend to review future municipal annexations from Mississippi with a view to their voting-related purpose and effect as it relates to both the affected municipalities and, if applicable, their municipal separate school districts.

Since the Section 5 status of the voting changes discussed herein is pending before the courts in Mississippi v. Reno (D.D.C.) and Dupree v. Moore (S.D. Miss.), we are providing a copy of this letter to the court and counsel of record in those cases.

Sincerely,



Anita S. Hodgkiss
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Patricia M. Wald
Honorable Louis F. Oberdorfer
Honorable Thomas P. Jackson
Honorable Rhesa H. Barksdale
Honorable Tom S. Lee
Honorable Henry T. Wingate
Counsel of Record in Mississippi v. Reno (D.D.C.)
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